



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 31, 2014

Bryan Wilson
River City Waste Recyclers, LLC
8940 Elder Creek Road
Sacramento, CA 95829

Gyan Kalwani
Bryan Wilson
River City Waste Recyclers, LLC
4221 Meadow Wood Ct.
El Dorado Hills, CA 95766

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Messrs. Wilson and Kalwani:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at the River City Waste Recyclers LLC's industrial facility located at 8940 Elder Creek Road in Sacramento, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Joaquin River and other California waters. This letter is being sent to River City Waste Recyclers, LLC, Bryan Wilson, and Gyan Kalwani as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "River City").

This letter addresses River City's unlawful discharge of pollutants from the Facility through channels that flow into Morrison Creek, which flows to the Sacramento River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit"). The WDID identification number for the Facility listed on documents submitted to the California

Regional Water Quality Control Board, Central Valley Region ("Regional Board") is 5S34I023293. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, River City is hereby placed on formal notice by CSPA that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against River City under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On August 8, 2011, after receiving a notice of violation from the Regional Board, River City submitted its Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") to the Regional Board. In its NOI, River City certifies that the Facility is classified under SIC codes 2499 (wood products, not elsewhere classified), and 5093 (processing, reclaiming, and wholesale distribution of scrap and waste materials). The State Board received and processed the NOI on August 15, 2011. The Facility collects and discharges storm water from its 3-acre, mostly paved industrial site through one outfall that indirectly discharges into Morrison Creek, that flow to the Sacramento River. On information and belief, CSPA alleges that all storm water discharges from the Facility contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. On information and belief, the Facility began operations on or about January 2011. To the extent the Facility was operating at an earlier date, this notice encompasses all rain dates, pollution discharges, and compliance with the General Permit requirements extending back to the initial date the Facility began any operations.

The Regional Board has identified beneficial uses of the Central Valley Region's waters and established water quality standards for the Sacramento River and its tributaries in "The Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin," generally referred to as the Basin Plan. See http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of the Sacramento River and its tributaries include, among others, water contact recreation, non-contact water recreation, municipal and domestic water supply, endangered and threatened species habitat, shellfish harvesting, and fish spawning. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but where there is generally no

body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Sacramento River for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the Sacramento River and its tributaries. It includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” *Id.* at III-8.01. It provides that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses.” *Id.* at III-5.00. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* It provides that “[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.*

The Basin Plan also provides that “[a]t a minimum, [surface] water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Table 64449-A (Secondary Maximum Contaminant Levels [“SMCLs”]-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Containment Levels-Ranges) of Section 64449. This incorporation-by-reference is prospective, including future changes to the incorporated provisions as the changes take effect. At a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain lead in excess of 0.015 mg/l.” Basin Plan at III-3.00. Table 64449-A provides an SMCL for iron of 0.3 mg/L and for aluminum of 0.2 mg/L. Table 64431 provides an MCL for aluminum of 1 mg/L.

Table III-1 of the Basin Plan provides a water quality objective (“WQO”) for iron of 0.3 mg/L and for zinc of 0.1 mg/L.

The EPA has adopted freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC” and Criteria Continuous Concentration – “CCC”) and for copper of 0.013 mg/L (CMC) and 0.009 mg/L (CCC). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology